

DAVID PAYNE 10-14-22

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IN THE UNITED STATES BANKRUPTCY COURT FOR
FOR THE NORTHERN DISTRICT OF OKLAHOMA
AMERICAN NATION BANK,)
Plaintiff,)
VS.) Case No. 20-11645-M
VAN WOO,)
Defendant.)

ORAL DEPOSITION OF DAVID PAYNE
TAKEN ON BEHALF OF DEFENDANT
IN TULSA, OKLAHOMA
ON OCTOBER 14, 2022

REPORTED BY: MICHELE VEST, CSR

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1 **contested litigation matters necessarily.**

2 Q How many employees does D.R. Payne have total?

3 A We are -- I'd say we're twelve professionals. I
4 think there's ten W-2 employees, and then we have --
5 I have a partner who is a valuator and appraiser who
6 is not an employee. So we're generally a dozen
7 professionals.

8 Q All right, sir. I'm going to ask you to turn to page
9 23 of your report, so at the end. This would be
10 Article Subsection V, I guess. Roman Numeral V. Do
11 you see that?

12 A **Yes.**

13 Q So, Mr. Payne, did you prepare this report?

14 A **Yes.**

15 Q Okay. And there at the end of the paragraph you
16 state, "No person provided significant professional
17 assistance other than supporting analytical
18 assistance to the person signing this report."

19 That is correct?

20 A **Yes.**

21 Q Okay. When you say "other than" -- that
22 parenthetical there, "other than supporting
23 analytical assistance," what do you mean by
24 "supporting analytical assistance"?

25 A Work that can be assisting and reviewing documents,

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1 setting up spreadsheets, doing analytics and that
2 type of work, as opposed to being more involved in
3 formulating the report or offering an opinion. And
4 at least under the appraisal standards, if a party
5 does more than support kind of analytics, if you
6 will, there are requirements to make a disclosure of
7 that. Now, it's not required for a litigation, but
8 we kind of follow that principle. And if one of the
9 other more senior parties in our practice, like,
10 another director does substantive work, I'll have
11 them cosign a report with me, for example. So in
12 this case, I had support, but nobody in the team that
13 worked on this rose to the level of offering, kind
14 of, a co-opinion or analysis. They provided
15 analytics. They may understand parts of the report
16 and things, but, didn't, you know, author it with me,
17 that kind of thing.

18 Q And I guess that also addresses the phrase in that
19 sentence that says "significant professional
20 assistance"?

21 A Right. So, you know, that kind of disclosure comes
22 out of the American Society of Appraisers, but we use
23 it in these matters to -- because I do have a number
24 of reports that get cosigned or somebody does a
25 substantial amount of work, but I may be testifying

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1 to the matter. And I think that's, you know, just
2 full disclosure of the level of support that we have
3 if I'm doing the testimony.

4 Q Appendix C that is referenced and attached to your
5 report, you state again on page -- and don't turn to
6 it yet, because I'm still going to ask you about page
7 23, I believe.

8 I apologize. I'm going to ask you to turn to
9 page 5 of your report. Are you there?

10 A Yes, I have that.

11 Q Sorry. At the beginning of that sentence you state,
12 "My opinions included herein represent summarized,
13 written descriptions of areas of testimony, the
14 summary exhibits and demonstrative aids attached as
15 Appendix C are incorporated as supportive analysis
16 serving as the bases, reasons and/or opinions to
17 support the summary opinions set forth herein."

18 And that I assume is still correct?

19 A It is, yes.

20 Q Is it fair to say that all of the opinions that you
21 give in your report are supported by documentary
22 evidence that is either referenced or included in
23 Appendix C?

24 A Appendix C would be summaries of more voluminous
25 information, generally. The set of data and

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1 information relied on is disclosed on the schedule
2 and dated information set forth in the report, so.
3 But any -- you know, when you have bank statements or
4 other multi-year financial statements, for example,
5 and you want to see the movement of assets and
6 liabilities or trends, you know, you tend to create
7 summaries that are of assistance. And that's really
8 what, you know, Appendix C is, are summaries of more
9 voluminous information. And the documents that were
10 used to create those summaries, we've disclosed in
11 the report.

12 Q Right. So, yes, obviously not every bank statement
13 is included in the appendix that you reviewed as
14 included in Appendix C, but at least they are all not
15 only bank statements but other documents which you've
16 used in your analysis are either referenced or
17 summarized in Appendix C; is that correct?

18 A **Referenced or summarized, yes.**

19 Q You stated earlier when I asked you about your
20 professional qualifications that you are -- just --
21 so I don't want to get it wrong -- that you are a
22 CPA, that you hold a -- or, I'm sorry, you're a
23 certified insolvency and restructuring advisor, as
24 well as a certified turnaround professional; correct?

25 A **Yes.**

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1 Q Are you familiar with the Certified in Financial
2 Forensics course that's offered by the AICPA?

3 A I am, yes.

4 Q And also, I assume you're familiar with the Certified
5 Fraud Examiners course that's offered by the ACFE?

6 A Yes.

7 Q Okay. But you don't hold either one of those
8 designations?

9 A Correct.

10 Q Have you ever considered obtaining those credentials?

11 A You know, I have, but in the organization that I'm
12 president of currently, AIRA, we teach forensics in
13 our materials. Those forensics are geared more
14 towards insolvency, restructuring and recovery
15 actions whereas the CFE is more, in my view -- from
16 their course materials and we've had people on our
17 staff that's are -- have gone through the CFE
18 program -- it's more prosecutorial in nature. You
19 know, it crosses over a lot into the criminal. It
20 doesn't really touch on a lot of the forensic areas
21 in insolvencies and restructuring. And it's really
22 the same way for the AICPA. I mean, I think they're
23 both good programs. But I just haven't had the need
24 to go through those programs just because of the
25 baseline that we have in AIRA with forensic wrapping

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1 regarding badges of fraud factors, which have been
2 set forth in uniform fraudulent transfer act
3 statements, UFTA, in the Internal Revenue Code, IRC,
4 are summarized below."

5 The UFTA factors that you list on page 3, are
6 those enumerated in a specific statute, in the
7 uniform act or anywhere?

8 A I think they're enumerated more specifically in cases
9 that deal with the UFTA as, you know, generally
10 recognized factors of conduct and transactions that
11 cut across the elements of the UTA, dealing with lack
12 of reasonable consideration, insolvency, you know,
13 other elements that might indicate intent, as opposed
14 to just constructive-type fraudulent transfers. So,
15 you know, a lot of that is enumerated in cases that
16 are sitting where the claim arises under a state UFTA
17 kind of statute, but the facts and the elements
18 considered under UFTA are enumerated in cases.

19 Q So it's --

20 A And it's also been published in articles and
21 treatises, you know, and things of that nature too.

22 Q So this is, to some extent, at least it's court-made
23 law or these -- these factors have been identified by
24 courts in reviewing fraudulent transfer acts?

25 A Yes.

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1 Q Similarly, are the Internal Revenue Code or the IRC
2 factors that you cite to, are those spelled out at a
3 specific place in the Internal Revenue Code?

4 A They are spelled out in the -- it's not directly in
5 the statute, but the Internal Revenue Service has
6 published those, if you will, related to the Internal
7 Revenue Code, in looking at this type of conduct from
8 a tax perspective.

9 Q Okay. So have they issued advisory opinion-time
10 documents to general, like, practitioners and the
11 public?

12 A I don't know if they characterize it as advisory
13 opinion. It would be more of a -- many times the
14 service, Internal Revenue Service, will provide a
15 checklist and data elements that are considered by
16 the service for taxpayers to be, you know, aware of
17 in their investigations and services that they -- you
18 know, the service provides.

19 Q And I realize that may be difficult given that you've
20 been practicing for over 30 years, but can you try to
21 put a general number on the number of cases, both
22 state and federal, that you've testified in, in which
23 your analysis or your opinions dealt with fraudulent
24 transfers, the tracing of funds or providing forensic
25 accounting services?

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1 A I don't have a number. You know, we did -- like for
2 example, in the company I went to work for, after I
3 left Ernst and Whinney, Amarex, Inc., I got put into
4 an involuntary bankruptcy in 1982. As we got towards
5 the end of that case in 1985, I was asked to do an
6 insolvency analysis. There was, I don't know,
7 \$50 million of preferential and potential fraudulent
8 transfers. You know, so that was the first time I
9 really touched those elements. And, you know, it's
10 just kind of a regular -- or at least some of these
11 elements, it's not always badges of fraud. But in
12 each bankruptcy case you have to have some, you know,
13 recognition of this if you're working for the debtor,
14 of course, to make initial disclosures or just carry
15 through with the duties of the debtor in possession
16 or the trustee so. It's going to be quite a few. I
17 don't know what number it would be.

18 Q You stated in your report that you have -- and I
19 believe you testified earlier, that you have acted as
20 a trustee on many occasions. You're not a Chapter 7
21 panel trustee, are you?

22 A No.

23 Q Are you referring to being a Chapter 11 trustee?

24 A A Chapter 11 trustee; correct, or a private -- I've
25 served in non-bankruptcy trustee roles.